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# From Corruption to Cooperation: Globalization Brings a Multilateral Agreement Against Foreign Bribery

ANDREA D. BONTRAGER UNZICKER\*

## INTRODUCTION

While virtually every country in the world outlaws the bribery of its own public officials, the United States has been the only country, since adopting the Foreign Corrupt Practices Act in 1977, to make the act of bribing a foreign public official illegal. In recent years, however, countries around the world have joined the anticorruption movement. The culmination of this growing movement resulted in a ground-breaking 1997 Convention agreed to by the Organization for Economic Cooperation and Development (OECD), a Paris-based organization made up of twenty-nine industrialized countries. This Convention came into force on February 15, 1999, and requires the twenty-nine member countries and five nonmember signatories to ratify their own national laws against the bribery of foreign government officials.<sup>1</sup>

Corruption exists in every country of the world and has existed for millennia.<sup>2</sup> In this century, however, corruption has been much more prevalent

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1. OECD, *OECD Convention on Combating Bribery to Enter Into Force on 15 February 1999* (visited Jan. 12, 1999) <[http://www.oecd.org/news\\_and\\_events/release/nw98-124a.htm](http://www.oecd.org/news_and_events/release/nw98-124a.htm)>.

2. NOONAN, *supra* note 2, at xx. For purposes of this Note, the terms "corruption," "bribery," and "foreign bribery" must be defined. "Corruption" is the broadest of the three terms and is defined by officials of the World Bank as "the use of public office for private gain." Cheryl W. Gray & Daniel Kaufmann, *Corruption and Development* (visited Oct. 25, 1999) <<http://www.worldbank.org/fandd/english/0398/articles/020398.htm>>. This very broad concept encompasses bribery and embezzlement, including activities such as extorting money to process a license application; paying government officials to affect the outcome of a judicial proceeding; and offering money, as a foreign corporation, to obtain a government contract. The term "corruption" is used generally in this Note and does not refer to specifically domestic versus international corruption or low-level corruption (by civil servants) versus high-level corruption (by top government officials). The term "bribery," according to John Noonan, "is an inducement improperly influencing the performance of a public function meant to be gratuitously exercised." JOHN. T. NOONAN, JR., *BRIBES* xi (1984). Therefore, bribery is narrower than corruption—it refers specifically to providing money or a favor in order to elicit a particular decision or response from,

in certain parts of the developing world.<sup>3</sup> Therefore, addressing the causes of corruption is a sensitive task because it often involves a discussion not of why corruption exists generally—the simple answer being that money is a temptation that can overcome social taboo—but why corruption exists today to a greater extent in less developed countries. The question of why corruption exists at such high levels in developing countries is an important question not only for the countries themselves but for all countries, as corruption is increasingly a problem with global effects.

Experts in the field of corruption have answered this question in different ways. First, some experts argue that corruption is a phase through which all economic systems must go. According to this group, newly democratic-capitalist countries are simply in a phase that will pass once the country is through an initial transitional period.<sup>4</sup> This group argues that corruption need not be addressed in any aggressive way because it will end on its own.<sup>5</sup> A second group of experts argues that the cause of systemic corruption is the cultural and moral attitudes of certain cultures. Consequently, they argue that imposing a multilateral ban on corruption is culturally imperialistic<sup>6</sup> and any perceived corruption should be ignored. The third and final group argues that the cause of corruption is not the culture of a society, but rather the result of weak enforcement of Western economic and political structures.<sup>7</sup> This group

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for our purposes, a government official. "Foreign bribery" is even more narrow and is used to specifically refer to the kind of corruption that is addressed in the OECD Convention. Foreign bribery, therefore, is "to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." OECD, *Combating Bribery of Foreign Public Officials in International Business Transactions—Text of Convention* (visited Oct. 21, 1998) <<http://www.oecd.org/daf/nocorruption/20nov1e.htm>>. This Note uses the term "foreign bribery" synonymously with the terms "international bribery" and "international corruption."

3. TRANSPARENCY INTERNATIONAL, *1999 Bribe Payers Index: 1999 Corruption Perceptions Index* (last modified Jan. 20, 2000) <<http://www.transparency.de/documents/cpi/index.html>>. It is important to note that some developing countries, such as Botswana, actually have lower perceived corruption rates than some developed countries. *Id.*

4. Richard T. De George, "Sullivan-Type" Principles for U.S. Multinationals in Emerging Economies, 18 U. PA. J. INT'L ECON. L. 1193, 1196 (1997).

5. See *id.*

6. See Beverley Earle, *The United States' Foreign Corrupt Practices Act and the OECD Anti-Bribery Recommendation: When Moral Suasion Won't Work, Try the Money Argument*, 14 DICK. J. INT'L L. 207, 221-22 (1996); see also Paul Blustein, *Pssst. Here's a Little Something That Seems to Slow Growth*, WASH. POST, July 17, 1996, at D1.

7. See Pieter Bottelier, *Corruption and Development* (visited Oct. 25, 1999) <<http://www.worldbank.org/html/extdr/offrep/eap/pbsp101998.htm>>.

argues that aggressive action must be taken to reinforce both Western economic structures and the rule of law in order to end corruption.<sup>8</sup>

The problem of corruption, however, stems from a combination of these causes; it can best be described as a result of Western structures being applied to cultures with very different traditions of political and economic organization.<sup>9</sup> For example, in sub-Saharan Africa,<sup>10</sup> a traditional belief is that every member of the community should be equal—it is wrong for one person to be higher than another, especially within a family grouping, as this inevitably leads to disharmony and conflict within the community or group.<sup>11</sup> This belief worked well for millennia because, as subsistence farmers, the survival of sub-Saharan Africans depended on equality through sharing. However, when this concept of sharing with one's family or village comes into contact with the individualism of capitalism (or, in the case of politics, accounting to the nation rather than the family), there is bound to be a dilemma for the person with access to money and power over how that money will be spent.<sup>12</sup> As Harold Miller frames it:

In Africa, most of the modern sector institutions and processes—including governance systems, ecclesiastical systems, education systems and commercial systems—have been borrowed or imposed from the outside. Most of them have not had sufficient time and process to become rooted in and accountable to mass society in Africa. So we have the spectre of a modern sector in Africa dangling above the people, informed by the requirements of globalization, international trade, [and] the obscene demands of the World Trade Organization.<sup>13</sup>

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8. *Id.*

9. However, it must be noted that the causes of corruption vary from country to country: "The causes of corruption are usually complex and rooted in a country's policies, bureaucratic traditions, political development and social history." *Id.*

10. I use the example of sub-Saharan Africa not because it is the primary place where corruption exists (though the continent does have a notorious reputation), but because I lived in rural Botswana for a number of years and therefore have a better understanding of traditional dynamics at work there. For a discussion of Africa's reputation, see Gail Russell Chaddock, *More Trade Brings Graft To Light—and to Trial*, CHRISTIAN SCI. MONITOR, Jan. 10, 1996, at 1; see also Trevor W. Parfitt, *Corruption, Adjustment and the African Debt*, 6 CORRUPTION & REFORM 25 (1991).

11. This assertion is based on conversations and interactions I experienced in Botswana (1993-96) and, specifically, on a conversation that took place between Tom Unzicker and Thihupe Dithinde during this time.

12. See RALPH H. FOLSOM ET AL., INTERNATIONAL BUSINESS TRANSACTIONS 665 (1995).

13. Electronic mail comments from Harold Miller, American Co-Representative for

In other words, corruption is a result of Western structures imposing upon non-Western cultures. To end corruption, then, highly corrupt nations must either withdraw from capitalism and global interdependence, or they must more fully embrace globalization and accept the politically liberal ideas of good governance and a strict rule of law.

The costs of international corruption are diverse and extensive.<sup>14</sup> Corruption can alter politics and destabilize governments,<sup>15</sup> undermine prospects for democracy,<sup>16</sup> reduce the effectiveness of a country's health and social services,<sup>17</sup> increase the price and size of public contracts,<sup>18</sup> discourage foreign investment,<sup>19</sup> hinder competition and distort trade,<sup>20</sup> and scare away donor nations.<sup>21</sup> According to Cheryl Gray and Daniel Kauffman of the World Bank, a recent study reports that 150 officials from sixty developing countries rank corruption "as the most severe impediment to development and growth

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Mennonite Central Committee—South Sudan, to Andrea D. Bontrager Unzicker, Law Student, Indiana University School of Law (Oct. 18, 1999) (on file with author). Mr. Miller is an American who has been living in East Africa for the last 32 years.

14. In past decades, some writers argued that corruption was not a problem and actually produced some positive benefits. They viewed bribery as speed money that helped individuals avoid bureaucratic delay and encouraged civil servants to work harder on behalf of business. See Paolo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681, 681 (1995). However, these arguments, originally made in the 1960s, are rarely made today. Rather than speeding up the system, civil servants and high level officials are tempted to increase bureaucracy and already excessive regulation and to slow down the system to extort higher and higher amounts. A 1997 study has shown that where there are high levels of bribery, the amount of time businesspeople must spend with government officials actually increases, rather than decreases. Gray & Kaufmann, *supra* note 2.

15. Lisa Harriman Randall, Note, *Multilateralization of the Foreign Corrupt Practices Act* 6 MINN. J. GLOBAL TRADE 657, 658 (1997). "In the 1970s, citizens of Japan, the Netherlands, and Italy were shocked to discover that their public officials had accepted bribes from American companies, creating domestic political tumult and disrupting diplomatic relations with other countries." *Id.* at 658-59; see also Michael A. Almond & Scott D. Syfert, *Beyond Compliance: Corruption, Corporate Responsibility and Ethical Standards in the New Global Economy*, 22 N.C. J. INT'L L. & COM. REG. 389, 433 (1997); Robert H. Sutton, *Controlling Corruption Through Collective Means: Advocating the Inter-American Convention Against Corruption*, 20 FORDHAM INT'L L.J. 1427, 1428 (1997).

16. Nancy Zucker Boswell, *An Emerging Consensus on Controlling Corruption*, 18 U. PA. J. INT'L ECON. L. 1165, 1165 (1997).

17. Jennifer M. Hartman, *Government by Thieves: Revealing the Monsters Behind the Kleptocratic Masks*, 24 SYRACUSE J. INT'L L. & COM. 157, 159 (1997).

18. Earle, *supra* note 7, at 222; see also Chaddock, *supra* note 11.

19. Boswell, *supra* note 17, at 1165; see also Chaddock, *supra* note 11; Mauro, *supra* note 15, at 700-04.

20. OECD, *supra* note 2.

21. Boswell, *supra* note 17, at 1167.

in their countries.<sup>22</sup> Though corruption exists in both developing and developed countries,<sup>23</sup> its effect on poor nations is especially troubling. For example, it has been reported that former President Mobutu Sese Seko of Zaire squirreled away five billion dollars in Swiss bank accounts while his country slipped into an economic crisis.<sup>24</sup> Similarly, investigations in Peru uncovered a misappropriation of international aid by government officials following earthquakes and floods.<sup>25</sup> Instead of drawing money into a poor country, international bribery causes a flight of funds; bribes received often end up in the Swiss economy rather than in the local economy.<sup>26</sup>

Bribery is universally shameful,<sup>27</sup> but despite the host of negative effects tied to international corruption and the fact that virtually every country in the world has laws against domestic bribery, many nations have been unwilling, until recently, to address the problem. The governments of developing countries have been silent because their officials can reap personal reward; the governments of more developed countries have been silent because their corporations have lobbied to maintain this easy route to business development. This Note attempts to answer the question of why, now, after two decades of promotion by the United States, the international community is finally agreeing to the elimination of foreign bribery. In answering this question, this Note argues that even though there are numerous, apparently varied, factors that have contributed to the current anticorruption climate, the force behind these factors, ultimately, is the process of globalization.

"Globalization" is the term used to describe the process of a growing global interconnectedness of people through the reduced effects of distances and borders, including a reduced role for the State and an increasing role for non-State actors.<sup>28</sup> Proponents of the concept of globalization argue that the changes taking place in the world today are not merely quantitatively different

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22. Gray & Kaufmann, *supra* note 2.

23. Philip M. Nichols, *Regulating Transnational Bribery in Times of Globalization and Fragmentation*, 24 YALE J. INT'L L. 257, 280 (1999).

24. Parfitt, *supra* note 11, at 29. "Coincidentally," this five billion dollar figure was very similar to Zaire's external debt at the time. *Id.*

25. Hartman, *supra* note 18, at 159-61.

26. Trevor Parfitt quotes an attendee of a 1988 International Monetary Fund and World Bank meeting as saying, "I have not worked 16 hours a day for 40 years so that Third World politicians can salt away fortunes in Zurich." Parfitt, *supra* note 11, at 25.

27. NOONAN, *supra* note 2, at 702.

28. See Alfred C. Aman, Jr., *The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy*, 31 VAND. J. TRANSNAT'L L. 769, 780 (1998).

but are also qualitatively different.<sup>29</sup> These qualitative changes include: the pace and extent of economic transactions and interdependence, the electronic communications revolution, homogenization of global culture, the collapsing of time and space, and an emerging global polity (meaning that social and political movements are increasingly taking place at the transnational or supranational level).<sup>30</sup> Critics of the concept of globalization argue that we have been interconnected since the days of the spice trade and not much has changed. There are also critics of globalization's effects—those that accept the concept but focus on the negative effects of globalization. These critics point to environmental degradation, the stamping out of cultural diversity, and increasing Western imperialism as the main impacts of globalization.

There are a number of ways to define globalization, each definition focusing on a different aspect of the term. Alfred Aman, in his 1999 Earl A. Snyder lecture at Indiana University, provided four ways of understanding globalization: the "Comparative-International" model, focusing on individual States and their interaction and interdependence; the "Globalization as Americanization" model, focusing on the convergence of world values toward North American ideals; the "Globalization as Denationalization" approach, emphasizing the decreasing role of the State; and the "Globalizing State" model, focusing on the way the State has become decentered—the State is not powerless but is permanently changed.<sup>31</sup>

This Note is based on the "Globalization as Americanization" model. For better or worse, globalization is increasingly viewed as a harmonization of economic and political values toward a Western, if not primarily North American, perspective.<sup>32</sup> Though globalization has increased the West's awareness of some of the issues facing members of the developing world, nearly all of the influence is traveling in one direction—from North to South and, perhaps to a lesser degree, from West to East. Many view "Globalization as Americanization" as a criticism of globalization, calling it imperialism, but the OECD Convention and the current anticorruption climate demonstrate how

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29. John Baylis & Steve Smith, *Introduction*, in *THE GLOBALIZATION OF WORLD POLITICS* 1, 7 (John Baylis & Steve Smith eds., 1997).

30. *Id.* at 9.

31. Alfred C. Aman, Jr., *Proposals for Reforming the Administrative Procedure Act: Globalization, Democracy and the Furtherance of a Global Public Interest*, 6 *IND. J. GLOBAL LEGAL STUD.* 397, 404-11 (1999).

32. See generally Philip Allott, *The True Function of Law in the International Community*, 5 *IND. J. GLOBAL LEGAL STUD.* 391 (1998); see also generally Martin Shapiro, *The Globalization of Law*, 1 *IND. J. GLOBAL LEGAL STUD.* 37 (1993).

Globalization as Americanization can be a positive rather than a negative force in the global community.

Part I of this Note discusses the twenty-three year old U.S. law for dealing with international corruption, the Foreign Corrupt Practices Act (FCPA), in order to describe the unilateral and ineffective attempt by the United States to deal with international bribery. Part II discusses the past efforts of the OECD to deal with international corruption, and it discusses the OECD Convention itself and its similarities to the FCPA in order to demonstrate how the international community has accepted the U.S. model. Part III addresses why important members of the international community are coming together now, at the turn of the millennium, after decades of disagreement over the banning of international corruption. More specifically, it discusses the factors behind the successful ratification of the OECD Convention, ultimately concluding in Part IV, that globalization, as a force behind these factors, is the reason that a multilateral agreement against international corruption now exists. Finally, this Note addresses what the international accord portends for the future of bribery and the future of international law.

## I. THE FOREIGN CORRUPT PRACTICES ACT

The FCPA has been the main effort by the United States to reduce international corruption over the last twenty-three years. This unilateral attempt, described below, has been ineffective at combating international corruption as it has remained a "tenacious reality" over the last two decades.<sup>33</sup> However, the FCPA has had some effect on U.S. corporations, as many are now taking the lead against foreign corruption.<sup>34</sup> Therefore, a discussion of the FCPA is important because it demonstrates two significant points. First, one country, even a very powerful country, cannot solve a global problem unilaterally. Second, the FCPA is a good world model, and the fact that it has been used as a model by the OECD demonstrates the globalization of U.S.-style, liberal values.

The problem of foreign bribery came to the attention of the U.S. public in the 1970s during the Watergate investigation. The Special Prosecutor discovered countless corporate slush funds used to make payments to domestic

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33. Steven R. Salbu, *Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act*, 54 WASH. & LEE L. REV. 229, 232 (1997).

34. Almond & Syfert, *supra* note 16, at 442-46; *see also* Blustein, *supra* note 7.



and foreign government officials, and soon the Securities and Exchange Commission (SEC) became involved by starting its own investigation into these corporate practices. In an SEC agreement exempting from prosecution those who provided information and rectified their behavior, over four hundred corporations admitted making payments to foreign officials.<sup>35</sup> The public and U.S. government officials were shocked by the existence and extent of the problem, and following a report to Congress by the SEC, the FCPA was enacted with little debate.<sup>36</sup>

The FCPA attempts to control the actions of U.S. businesses and corporations registered with the SEC by prohibiting the bribery of foreign government officials by U.S. companies. It is made up of two parts: (1) accounting provisions, which aim to disclose illegal payments; and (2) a direct prohibition against the bribery of foreign officials. The antibribery provisions make it unlawful to offer or give anything of value to any foreign official for the purpose of obtaining or retaining business, or to do the same through an intermediary.<sup>37</sup> Not all bribes are illegal; facilitating payments—payments that expedite routine governmental action—are expressly excepted. Also, it is an affirmative defense that the payment was valid under written, local law or that it was a bona fide expenditure directly related to the promotion of a product or service.<sup>38</sup>

In the first ten years of the FCPA, there was relatively little action by the two departments in charge of enforcing its provisions, the SEC and the Department of Justice (DOJ).<sup>39</sup> However, a number of recent high-profile cases demonstrate that the SEC and DOJ are now prosecuting more aggressively. Lockheed, a U.S. aircraft manufacturer, paid a \$24.8 million fine for bribery involving an Egyptian legislator; Young and Rubicam, an advertising

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35. Randall, *supra* note 16, at 663.

36. Bruce Zagaris, *Avoiding Criminal Liability in the Conduct of International Business*, 21 WM. MITCHELL L. REV. 749, 755 (1996). In signing the new law, President Carter stated the opinion of the nation: "[B]ribery is ethically repugnant and competitively unnecessary. Corrupt practices between corporations and public officials overseas undermine the integrity and stability of governments and harm our relations with other countries. Recent revelations of widespread overseas bribery have eroded confidences in our business institutions." Daniel Pines, Comment, *Amending the Foreign Corrupt Practices Act to Include a Private Right of Action*, 82 CALIF. L. REV. 185, 188 (1994). For the text of the FCPA, see Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78dd-1 to -2 (1994)).

37. See Foreign Corrupt Practices Act of 1977, *supra* note 37.

38. See *id.*

39. Gary P. Naftalis, *The Foreign Corrupt Practices Act*, WHITE-COLLAR CRIME REP. Sept. 1997, at 1. The DOJ commenced twenty bribery investigations, while the SEC commenced only three. *Id.*

agency, paid a \$500,000 fine for attempting to secure a contract with the Jamaican Tourist Board; and Vitusa, a New Jersey Corporation, was fined \$20,000 and the president of the company was criminally convicted after the discovery that "service fees" were paid to a Dominican Republic official through an intermediary.<sup>40</sup> In the late 1990s, the SEC and DOJ investigated the following companies and their corresponding offenses: IBM and its activities in Argentina;<sup>41</sup> Triton Energy for its business in Indonesia; and Strategic Solutions Integrators in obtaining a \$7.6 million contract in the Philippines.<sup>42</sup>

Over the last twenty years, the FCPA has had little effect outside the United States. Efforts by the U.S. government to convince other countries to adopt similar laws have been viewed by some as morally imperialistic<sup>43</sup> and have been met with either silence or ineffective agreements under which ratification of national laws is voluntary. Though the U.S. law, on its own, has had no effect in reducing worldwide levels of international bribery, it has had an effect on U.S. firms. These companies have responded by taking the lead against bribery and have found that the FCPA is an excuse that is accepted by foreign officials as a reason not to give bribes.<sup>44</sup> Soon, however, U.S. companies will not be alone in their crusade against bribery, for companies located in the twenty-nine signatories to the OECD Convention will also be required to comply with similar bribery laws.

## II. EFFORTS OF THE OECD

The OECD was formally known as the Organisation for European Economic Co-operation and was comprised of European countries who came together after World War II to administer U.S. aid under the Marshall Plan.<sup>45</sup>

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40. Earle, *supra* note 7, at 211-15.

41. Sebastian Rotella, *IBM Scandal Is Equal Parts Spectator Sport and Lesson*, L.A. TIMES, Aug. 11, 1996, at D1.

42. Lynne Baum, *Foreign Corrupt Practices Act*, 35 AM. CRIM. L. REV. 823, 884 n.7 (1998).

43. Randall, *supra* note 16, at 673. See generally Joongi Kim & Jong Bum Kim, *Cultural Differences in the Crusade Against International Bribery: Rice-Cake Expenses in Korea and the Foreign Corrupt Practices Act*, 6 PAC. RIM L. & POL'Y J. 549 (1997). But see Pines, *supra* note 37, at 204-06 (opining that the moral imperialism argument is unpersuasive as every nation of the world already outlaws bribery).

44. In fact, a General Accounting Office survey of 250 corporations indicated that less than one percent claimed any loss of business due to the FCPA. Almond & Syfert, *supra* note 16, at 397.

45. OECD, *OECD's Origins* (last modified Jan. 21, 2000) <<http://www.oecd.org/about/origins/index.htm>>.

Today, the OECD provides a forum for governments committed to free-market principles and liberal democracy to compare experiences and seek solutions to economic problems. Its members include various European countries, the United States, as well as Japan, South Korea, Australia, New Zealand, Canada, and Mexico.<sup>46</sup> According to the OECD, its mission is to establish legal codes, negotiate multilateral agreements, help members define policies, encourage countries' self-assessments, and more broadly, to contribute to world trade and sound economic expansion.<sup>47</sup>

The United States first approached the OECD regarding international bribery in 1981, but no action resulted from these initial exchanges.<sup>48</sup> Following further attempts by the United States, a majority of OECD members agreed upon a Recommendation on Bribery in International Business Transactions (OECD Recommendation) in 1994. The OECD Recommendation was not binding, however—members simply agreed to take “meaningful steps” to address foreign bribery.<sup>49</sup> Since then, OECD Working Groups have studied criminalization, tax deductibility, aid procurement, and accounting practices,<sup>50</sup> but the OECD Recommendation did not result in any country enacting a national law similar to the FCPA. Members began calling for a convention that would be legally binding, as no country wanted to “rely on the good will of other countries” and risk being the only one to enact an antibribery law.<sup>51</sup> In 1996, members agreed upon a Recommendation on the Tax Deductibility of Bribes to Foreign Officials, calling for the end of the practice by which many countries not only allow the bribery of foreign officials, but provide a tax deduction for payments made. Finally, in 1997, an agreement was struck that many in the international community have praised as a “milestone”<sup>52</sup> and a “landmark achievement”<sup>53</sup> in worldwide efforts to end

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46. OECD members include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. OECD, *Membership* (visited Jan. 24, 2000) <<http://www.oecd.org/about/general/member-countries.htm>>.

47. OECD, *What Is OECD* (visited Oct. 21, 1998) <<http://www.oecd.org/about/general/index.htm>>.

48. A. Timothy Martin, *Corruption and Improper Payments: Global Trends and Applicable Laws*, 36 ALBERTA L. REV. 416, 429 (1998).

49. Boswell, *supra* note 17, at 1169.

50. *Id.*

51. Peter Eigen, *The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 45 FED. LAW. 22 (1998).

52. Ayesha Qayyum, *Combating Corruption in International Business: OECD Convention Signed*, 21 MIDDLE E. EXECUTIVE REP. 9 (1998).

53. Eigen, *supra* note 52, at 22.

international corruption. In May, 1997, OECD members agreed to negotiate a convention that would be ready for signature by the end of the year. Surprising many experts, the OECD Convention was ready on schedule and was signed by all twenty-nine OECD members and five nonmembers on December 18, 1997.<sup>54</sup> Ultimately, the OECD Convention requires that each signatory enact its own national law to make the act of foreign bribery illegal.

The OECD Convention itself contains provisions very similar to those found in the FCPA. Following a Preamble that considers the widespread problem of bribery in international business and recognizes the role of governments in the prevention of corruption, Article One, entitled *The Offense of Bribery of Foreign Public Officials*, defines the elements of bribery of foreign officials. This Article, like the FCPA, essentially requires countries to prohibit the giving of money or anything of value directly or indirectly to foreign public officials in order to obtain or retain business or any improper advantage.<sup>55</sup> Articles Two through Eleven provide parameters for sanctions, jurisdiction, enforcement, and a statute of limitations.<sup>56</sup> Article Twelve requires that signatories participate in the OECD follow-up program, which will “monitor and promote the full implementation of this Convention,”<sup>57</sup> and the articles that follow provide for the signing of the OECD Convention and specifically allow for signing by nonmember countries at any point, even after it has entered into force. As with the FCPA, “facilitating payments” are excepted, as are payments made under written, local law.<sup>58</sup>

Although the OECD Convention does not substantially differ from the FCPA, U.S. legislators did have to alter the FCPA in order to ratify the Convention in the United States.<sup>59</sup> For example, while the FCPA prohibits bribery only in order to obtain or retain business, the OECD additionally

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54. *Id.* The nonmembers are Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic. *Id.*

55. OECD, *supra* note 2.

56. *Id.*

57. *Id.*

58. OECD, *Commentaries on the Convention on Combating Bribery of Officials in International Business Transactions* (last modified Jan. 7, 2000) <<http://www.oecd.org/daf/nocorruption/20nov2e.htm>>.

59. In May, 1998, the Department of Justice submitted legislation to the U.S. Congress in order to update the FCPA and bring it into compliance with the OECD Convention. In July, the Senate ratified the Convention and unanimously approved a bill to implement it. The House of Representatives approved the bill in October, 1998, and President Clinton signed the bill into law in November 1998. *OECD: Senate Ratifies Treaty, OKS Bill to Strengthen Anti-Bribery Laws*, BNA INT'L TRADE DAILY NEWS, Aug. 4, 1998, available in WL, BNA-BTD file; International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366 (visited Jan. 22, 1999) <[http://frwebgate.access.gpo.gov/cgi...skb/wais/data/105\\_cong\\_public\\_laws](http://frwebgate.access.gpo.gov/cgi...skb/wais/data/105_cong_public_laws)>, available in <<http://thomas.loc.gov/>>.

prohibits bribery in order to gain any "improper advantage." This may arise where tax breaks or permits are offered to the briber.<sup>60</sup> Another difference lies in the definition of a foreign public official. Unlike the FCPA, the OECD does not include political party officials in its definition. However, the OECD has added to this category the bribery of any official with a public international organization,<sup>61</sup> for example, the International Monetary Fund (IMF) or World Bank. Despite minor differences, the international community has created an agreement that is, both in the spirit and the letter, very similar to the U.S. law drafted over twenty years ago.

### III. FACTORS BEHIND THE SUCCESSFUL RATIFICATION OF THE OECD CONVENTION

Following the OECD agreement in early 1997, there were many skeptics who did not believe the international Convention would be signed by the end of the year, that nations would then present antibribery legislation to their own legislatures in 1998, and that the Convention would come into force in 1999.<sup>62</sup> However, over the past three years, countries have one-by-one submitted domestic legislation, and one-by-one national legislatures have ratified domestic laws prohibiting the bribery of foreign public officials. As of December 1, 1999, the following signatories had ratified national antibribery laws: Australia, Austria, Belgium, Bulgaria, Canada, Finland, Germany, Greece, Hungary, Iceland, Japan, Mexico, Norway, Slovakia, South Korea, Sweden, the United Kingdom, and the United States.<sup>63</sup>

What led to this miraculous change of events, when just a few years earlier the United States' challenge to countries to follow its lead was rebuffed?<sup>64</sup> According to the *International Herald Tribune*, "What is surprising is that the campaign, dismissed as hopelessly naive and moralistic

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60. But see Gregory J. Wallance, *Morality Triumphs: The Foreign Corrupt Practices Act Goes Global*, in CORPORATE COMPLIANCE: CAREMARK AND THE GLOBALIZATION OF GOOD CORPORATE CONDUCT 1241, 1244 (Practising Law Institute 1998) (interpreting the FCPA quite broadly, the DOJ may include promises like tax breaks).

61. Arthur Aronoff, *Antibribery Provisions of the Foreign Corrupt Practices Act* (visited Jan. 7, 1999) <<http://www.ita.doc.gov/legal/fcpa1/html>>.

62. See generally Wallance, *supra* note 61.

63. OECD, *OECD Anti-Corruption Unit: Combating Bribery and Corruption in International Business Transactions* (last modified Jan. 21, 2000) <<http://www.oecd.org/daf/nocorruption/annex2.htm>>.

64. See Earle, *supra* note 7, at 226 (arguing that Europe was no more receptive to the FCPA than were developing countries).

only a few years ago, is beginning to bear fruit.”<sup>65</sup> Below, eight factors are presented that, in combination, created the necessary environment for the OECD’s “ground-breaking treaty.”<sup>66</sup> These eight factors represent, ultimately, various aspects and results of globalization, and the process of globalization, as Part IV argues, can best explain why this international agreement now exists.

#### *A. Economic Rationales*

A key factor behind the OECD Convention is that the number of free-market economies has increased dramatically in the last number of years. In closed market systems like communism, bribery is not necessarily viewed as an inefficiency, but rather as an efficient way to bypass the bureaucracy embedded in the system. However, in free-market economies, where the open market determines the price of a government contract, bribery hinders competition and inflates the cost of public projects. Since 1989 and the collapse of communism, modern capitalism has been the only viable economic choice for countries.<sup>67</sup> While there are various forms of capitalism and many nations that are still in transition, the planned economy is viewed globally as a bankrupt concept. Leaders (though not necessarily government officials) in these new capitalistic countries increasingly understand that bribery is a threat to their economies. Daniel Pines explains, “Bribery sabotages the free market system at the core of capitalism; the best product at the best price does not win. . . . This damages the entire free competition concept of capitalism.”<sup>68</sup> Also, as free-market nations become increasingly interdependent, bribery in one country is more of a threat to the world economy. With the increase in number and interdependence of capitalistic countries, it becomes even more imperative that the world eliminates bribery in each State’s internal system.

Second, along with the growth of capitalism, international trade, and interdependence, is the increasing amount of research being conducted and disseminated on the negative externalities of bribery in a free-market system.

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65. Reginald Dale, *Foreign Bribery Should Be a Crime*, INT’L HERALD TRIB., Apr. 4, 1997, at 13.

66. Lawrence Speer, *OECD: OECD Anti-Corruption Treaty to Enter Into Force Feb. 15; Canada Last to Sign*, BNA INT’L TRADE DAILY NEWS, Dec. 21, 1998, available in WL, BNA-BTD file.

67. Roger Tooze, *International Political Economy in an Age of Globalization*, in THE GLOBALIZATION OF WORLD POLITICS, *supra* note 30, at 212, 226; Alex Y. Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT’L L.J. 429, 462-63 (1997).

68. Pines, *supra* note 37, at 213-14.

Not only have countless articles appeared in U.S. economic and legal journals, but many international and third world organizations, newspapers, and conferences have been devoted to the topic. Research on corruption is often conducted by Western researchers and organizations and is increasingly being reported in the South. Organizations such as the OECD, IMF, and World Bank have produced research and reported on the economic costs of corruption.<sup>69</sup> Conferences such as the Durban International Anti-Corruption Conference convened in October, 1999, in Durban, South Africa, have been a vehicle for conveying this research. This Conference disseminated information to over 1,600 delegates from 135 countries.<sup>70</sup>

Finally, related to the increase in research and dissemination on the costs of corruption, arguments against bribery are turning from moral arguments into economic arguments. Beverly Earle argues that "research linking bribery with poor economic development may be the best argument for those countries which, heretofore, have campaigned for an end to bribery."<sup>71</sup> In the past, reformers were ridiculed as "do-gooders" who were ignoring the harsh realities of international business.<sup>72</sup> Today, a reduction in corruption is seen as economically prudent for both the international corporation and the local government.<sup>73</sup>

### *B. The Clinton Administration*

Tied to the factor of an increased understanding and acceptance of free-market economics is the increased emphasis by the Clinton Administration on economic matters. Early in his term, President Bill Clinton stated his conviction that economic security is a part of national security, and his Administration has taken a variety of actions to strengthen economic foreign

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69. See generally Gray & Kaufmann, *supra* note 2. Gray and Kaufmann are with the World Bank. *Id.* See also Paolo Mauro, *The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-Country Analysis*, in CORRUPTION AND THE GLOBAL ECONOMY 83 (Kimberly Elliott ed., 1997). Mr. Mauro is an economist with the Washington office of the International Monetary Fund. *Id.* As for the OECD, the organization has 2,000 members who conduct research and produce 350 publications each year. See SCOTT SULLIVAN, FROM WAR TO WEALTH: FIFTY YEARS OF INNOVATION 98 (1997).

70. The Durban Convention was the 9th annual anticorruption conference sponsored by Transparency International. *The Durban Commitment to Effective Action Against Corruption* (visited Nov. 5, 1999) <[http://www.transparency.de/iacc/durban\\_commitment.html](http://www.transparency.de/iacc/durban_commitment.html)> [hereinafter *The Durban Commitment*].

71. Earle, *supra* note 7, at 223.

72. *Id.* at 209.

73. See Boswell, *supra* note 17, at 1165-66.

policy.<sup>74</sup> According to U.S. Secretary of State Madeline Albright, the concept of a “collective security system” has moved away from exclusively military issues and now encompasses issues of economic strength and humanitarian aid.<sup>75</sup> For example, U.S. diplomats and embassies have been asked to aggressively promote U.S. exports and investments abroad,<sup>76</sup> and the Central Intelligence Agency is now involved in economic investigations.<sup>77</sup> This focus on economic security has given the anticorruption movement a “new lease on life” because the principles of the FCPA are promoted as important issues of economic foreign policy.<sup>78</sup>

The end of the Cold War has afforded the Clinton Administration the opportunity to focus on economic security. Unlike his predecessors who were perpetually engaged in a military struggle with the U.S.S.R., or, as in the case of former U.S. President George Bush, engaged in the uncertainties of Soviet break-up, President Clinton has had the luxury of focusing on a liberal future.

The Clinton Administration has promoted the anticorruption cause in a variety of ways. First, Administration officials have spoken out against foreign bribery to international and domestic organizations. Former U.S. Secretary of State Warren Christopher, speaking to the OECD in 1994, described anticorruption as a “vital objective” of the world community.<sup>79</sup> U.S. Secretary of Commerce Mickey Kantor appealed to the World Trade Organization (WTO) to address the issue as an important concern of international trade<sup>80</sup> and, in his address to the Energy Committee in 1996, called it one of the most difficult barriers faced by U.S. corporations.<sup>81</sup> Kantor has, in fact, been described as sanctimoniously zealous in his fight against bribery.<sup>82</sup>

Second, the Administration has approached its trading partners directly, urging these nations to adopt laws similar to the FCPA.<sup>83</sup> Third, it has

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74. Almond & Syfert, *supra* note 16, at 399-400.

75. *Id.* at 399 n.52.

76. Reporting on this task, seven U.S. Ambassadors to Southeast Asian nations traveled around the country speaking to U.S. business leaders in 1999. The author attended this conference in Indianapolis, Indiana. U.S.-ASEAN Business Council's Ambassadors Tour (June 11, 1999). See also Almond & Syfert, *supra* note 16, at 400 n.54.

77. Almond & Syfert, *supra* note 16, at 400 n.54.

78. *Id.* at 400.

79. *Id.* at 427.

80. *Id.* at 427-28.

81. See JEFFREY P. BIALOS & GREGORY HUSISIAN, THE FOREIGN CORRUPT PRACTICES ACT: COPING WITH CORRUPTION IN TRANSNATIONAL ECONOMIES I (1997).

82. Salbu, *supra* note 34, at 283 n.351.

83. Baum, *supra* note 43, at 838; Barbara Ettore, *Why Overseas Bribery Won't Last*, MGMT. REV., June 1, 1994, at 20.



developed and published *Model Business Principles*, a voluntary guide for U.S. businesses, which has been used by multinational corporations such as Boeing, Honeywell, General Electric, and Westinghouse.<sup>84</sup> Fourth, it has spoken to foreign governments on behalf of U.S. companies who are about to lose deals because of another company's bribery,<sup>85</sup> and the Administration has aggressively investigated corruption and brought it to the attention of foreign governments.<sup>86</sup> Finally, agencies such as the Trade Promotion Coordinating Committee, under the Department of Commerce, have issued forward-looking anticorruption initiatives in their Annual Reports.<sup>87</sup> As a result of the end of the Cold War, the Clinton campaign against corruption has been more successful in convincing international economic and political organizations like the OECD and the Organization of American States (OAS) to address and adopt initiatives against foreign bribery.<sup>88</sup>

### C. Growth of Democracy

The convergence of thought on international corruption can also be attributed to the emergence of democracy throughout the world. According to the Freedom House, in 1790 there were three countries that could be described as democracies. In 1990, there were sixty-one, and by 1995, the number had grown to 114.<sup>89</sup> In a democracy, transparency and accountability are imperative. Democratic governments are undermined by citizens' lack of faith in them,<sup>90</sup> and, without transparency, governments become unstable and eventually fall.<sup>91</sup> In these new democracies, corruption is being challenged by opposition parties, the newly-freed press, bold, domestic religious and other non-governmental groups, and increasingly uninhibited prosecutors and judges.<sup>92</sup>

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84. Almond & Syfert, *supra* note 16, at 425 n.217.

85. Ettorre, *supra* note 84.

86. BIALOS & HUSISIAN, *supra* note 82, at 4.

87. *Id.* at 7.

88. See Almond & Syfert, *supra* note 16, at 440-42; Baum, *supra* note 43, at 839-40.

89. Almond & Syfert, *supra* note 16, at 399; Seita, *supra* note 68, at 491 n.59. However, these figures do depend on the definition of democracy used. The same study was used to determine that only 20% of the world lived in free countries, 41% in partly-free countries, and 39% lived in countries where basic rights are denied. *Id.* at 491 n.67.

90. See Boswell, *supra* note 17, at 1165.

91. See *id.* at 1166-67.

92. Robert S. Leiken, *An End to Corruption*, WASH. POST, Apr. 16, 1996, at A15. "Citizens who have silently endured corruption for generations now take to the streets to protest corrupt practices, to elect anti-corruption candidates and to impeach corrupt presidents, vice presidents,

In a democracy, the will of the people rather than that of the leader is pursued. If a democratically-elected leader is corrupt, the citizens of the country can lobby for reform, or, if this is not effective, can elect new leaders.<sup>93</sup> For example, in 1993 and 1994, the presidential campaign in Mexico focused on corruption, and more recently, the president of Venezuela was ousted because of questionable business practices.<sup>94</sup>

Though democratic countries provide more of a check on power than nondemocratic systems, democracy does not assure a corruption-free environment.<sup>95</sup> For example, in the United States a Miami city official pleaded guilty in 1996 to allegations of corruption in the procurement of computers.<sup>96</sup> However, in newly-democratized countries, such as the countries of the former Soviet Union, corruption remains alarmingly prevalent and undisclosed.<sup>97</sup> According to Jeffrey Bialos and Gregory Husasian, "After decades of communist dictatorship, with law serving as an instrument of, rather than a check on, arbitrary state power, the rule of law is fragile and largely undeveloped in these countries."<sup>98</sup>

International organizations are increasingly promoting concepts such as "good governance" and the "rule of law" in democracies that are experiencing high-levels of corruption. These movements ask countries that refer to themselves as democracies, perhaps because they conduct multiparty elections, to institute independent courts and have transparent legislative and executive procedures. These movements also make explicit the idea that corruption has no place in a democracy.

#### *D. Technology and the Media*

Tied to increasing democratization as a factor in the antibribery force is the increasing role of the media and technology. As for the media, its continuing effect can be divided into two parts: increasing press freedom and greater worldwide access to international news. First, domestic and international investigative journalists have used their greater freedom to expose scandal.

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premiers, cabinet ministers and party leaders." *Id.*

93. *Id.*

94. Randall, *supra* note 16, at 681 n.113.

95. Kimberly Ann Elliott, *The Problem of Corruption: A Tale of Two Countries*, 18 NW. J. INT'L L. & BUS. 524, 525 (1998).

96. *Worms Beneath the Palms*, ECONOMIST, Nov. 30, 1996, at 25.

97. See BIALOS & HUSISIAN, *supra* note 82, at 13.

98. *Id.* See also Nichols, *supra* note 24, at 280-81 (discussing the prevalence of bribery in countries and economies undergoing transition).

Frank Vogl, Vice-Chair of Transparency International (TI), an anticorruption non-governmental organization (NGO), argues that “[w]ith the opening of more and more countries to multiparty politics, coupled with greater press freedom . . . many incidents of corruption have come to the fore.”<sup>99</sup> Journalists driven to investigate scandalous stories will continue to bring incidents of corruption to the attention of the international community, and with the growth of stories of governmental scandal, increased pressure will be placed on the worst actors to become accountable.<sup>100</sup> For example, an investigative report in Brazil disclosed that as much as seventy percent of outside aid ended up in the hands of politicians. Following this report, the Brazilian Congress called for the expulsion of eighteen lawmakers.<sup>101</sup> In Malaysia, where it was reported that British companies bribed officials in infrastructure contracts, the government declared those companies ineligible to bid in the future.<sup>102</sup>

Second, not only are more stories being investigated and exposed than in the past, these stories are instantaneously transmitted around the world. According to Timothy Martin, “The increasing spread of global communications, e.g., CNN, has resulted in growing dissatisfaction in many countries’ populations with the fact that politicians and public officials get rich through corrupt practices.”<sup>103</sup> Corruption thrives in darkness, and as more stories are brought to light, the outrage of the international community grows. Gary Edwards, president of the Ethics Resource Center, adds that with the coming of global news like CNN, not only can the world observe what occurs in corrupt countries, but corrupt countries can see how business is conducted ethically.<sup>104</sup>

Similarly, advances in technology have furthered the world’s converging views on bribery. Through the Internet and e-mail, people across the world can exchange articles, images, and ideas. Today’s technology can expose a population to outside ideas and expose domestic occurrences to a global audience; this exposure has the tendency to promote democracy and human rights.<sup>105</sup> It is very difficult for a government to be in the global marketplace

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99. Quoted in Almond & Syfert, *supra* note 16, at 392 n.8.

100. According to Richard Hecklinger, the current U.S. Ambassador to Thailand, one of the reasons for a decrease in corruption in that country is increasing freedoms yielded to the press. Ambassador Richard Hecklinger, Speech at the U.S.-ASEAN Business Council’s Ambassadors Tour, *supra* note 77.

101. Ettorre, *supra* note 84.

102. *Id.*

103. Martin, *supra* note 49, at 439.

104. Ettorre, *supra* note 84.

105. Seita, *supra* note 68, at 455-56.

without using advanced technology, and this same technology communicates both business information and politically embarrassing information. The two cannot be separated.<sup>106</sup>

### *E. Developing Countries' Own Initiatives*

Traditionally, the world of bribery was divided into two parts: (1) the developed world (the bribers) that disliked bribery but saw it as a necessary evil of dealing with the developing world, and; (2) the developing world (the bribees) which attempted to block reform at every turn. Today, the less developed nations of the world are increasingly seeing bribery as a destructive force in their countries and are trying to eliminate the flow of money into the hands of corrupt leaders.<sup>107</sup>

One way developing countries are dealing with international bribery is by banning certain firms from future contracts with their governments after bribery is discovered. For example, the government of Singapore barred five multinational corporations from Britain, Germany, Italy, and Japan from future power contracts because of allegations of bribery.<sup>108</sup> In Malaysia, several British companies were banned from future public contracts following bribery on sizable infrastructure contracts.<sup>109</sup> Developing countries are also increasingly using local bribery laws to convict bribers and remove local officials. In South Korea, more than 1,000 people were jailed in corruption-related matters in 1993, the first year of President Kim's term,<sup>110</sup> and in 1996, 961 people were arrested and two ministers were dismissed.<sup>111</sup> In a two-year anticorruption campaign in China, the party secretary of Beijing was ousted and a number of municipal officials were given the death penalty.<sup>112</sup> A Venezuelan president was recently removed because of questionable business

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106. *Id.* at 456. See also Peter Willetts, *Transnational Actors and International Organizations in Global Politics*, in *GLOBALIZATION OF WORLD POLITICS*, *supra* note 30, at 287, 301 (arguing that governments have three options: to maintain no control over communications, to bear heavy costs in unsuccessfully controlling communications, or to close communication, thereby disrupting transactions, but failing to deter the determined).

107. Randall, *supra* note 16, at 679.

108. Almond & Syfert, *supra* note 16, at 435.

109. Ettore, *supra* note 84.

110. Pines, *supra* note 37, at 212.

111. Gail Russell Chaddock, *Ethics in Business Dealings Urged by World Lenders*, *CHRISTIAN SCI. MONITOR*, Nov. 20, 1996.

112. Randall, *supra* note 16, at 684 n.113.

practices,<sup>113</sup> and Argentina conducted an anticorruption campaign in 1996 that overhauled its judicial system.<sup>114</sup>

Political campaigns have also focused on corruption. For example, Japan's Prime Minister Hosokawa ran on a platform of the elimination of "contributions" to public officials,<sup>115</sup> and corruption reform was a main theme in Mexico's 1993-94 presidential campaign.<sup>116</sup> National movements against bribery have appeared in countries as diverse as Argentina, Cambodia, Italy, Pakistan, Tanzania, and New Zealand; the goals of these movements have been to elect anticorruption leaders and impeach corrupt ones.<sup>117</sup> Additionally, many governments have appointed national commissions and agencies to work on reforms and prosecutions.<sup>118</sup>

For the first time, developing countries are sponsoring international resolutions against bribery. Russia, a country with some of the worst cases of corruption, was among the recent sponsors of a United Nations Resolution against foreign bribery,<sup>119</sup> and Latin American leaders placed the corruption issue on the agenda of the Summit of the Americas, which resulted in the Inter-American Convention Against Corruption in 1996.<sup>120</sup> Developing countries have signed on to the OECD Convention, even though they are not OECD members,<sup>121</sup> and are asking for help from TI, the new non-governmental organization based in Germany, whose goal is the elimination of international bribery.<sup>122</sup> In Ecuador, the government is working with TI to establish itself as "an island of integrity."<sup>123</sup> As part of this arrangement, firms bidding for public contracts are required to sign a declaration that they will not offer bribes.<sup>124</sup>

Finally, governments are simply addressing the subject with new-found vigor. The former President of South Africa, Nelson Mandela, has called for international action against corruption.<sup>125</sup> The former president of Nigeria,

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113. *Id.*

114. Chaddock, *supra* note 112.

115. Pines, *supra* note 37, at 212.

116. Randall, *supra* note 16, at 684 n.113.

117. Leiken, *supra* note 93, at A15.

118. *Id.*

119. Randall, *supra* note 16, at 680-81.

120. Boswell, *supra* note 17, at 1171.

121. These nonmembers are Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic. *OECD News Release*, *supra* note at 48.

122. Earle, *supra* note 7, at 232.

123. Ettorre, *supra* note 84.

124. *Id.*

125. Chaddock, *supra* note 11.

Olusegun Obsanjo, has been vocal about the misconception of cultural gift-giving: "In the African concept of appreciation and hospitality, the gift is usually a token. . . . It is done in the open, and never in secret. . . . If anything, corruption has perverted and destroyed this aspect of our culture."<sup>126</sup> President Mkapa of Tanzania has published a report disclosing the assets and income amassed by he and his wife, and how these assets were acquired.<sup>127</sup> These initiatives by developing countries have the potential to accomplish more in a short time than the years of U.S. attempts to change attitudes in developed nations.<sup>128</sup>

Why have developing countries taken on this issue? Part of the reason is that many are seeing what corruption has done to their economies. Speaking about corruption in Asia, Gary Edwards of the Ethics Resource Center says, "The practice is increasingly viewed as unacceptable and destructive to their economies."<sup>129</sup> Secondly, more and more government officials are being trained in the West than had been in the past.<sup>130</sup> Finally, nations are finding it necessary to clean up their image in order to appear stable for foreign direct investment and international aid. In Kenya, the IMF recently reinstated aid of \$205 million to reward the country for its efforts in combating corruption.<sup>131</sup> While these efforts are being carried out in developing countries, they may more properly be viewed as reactions to or direct acceptance of U.S., or at least Western, liberal ideas. Therefore, these efforts may be based less on an increasing power of developing countries than on the increasing power of U.S. ideological hegemony.

#### *F. Scandals in the Developed World*

As discussed above, the world of bribery is no longer neatly defined in categories of the bribing North and the bribed South. While less developed countries are trying to improve their image, there have been a number of instances in the 1990s of bribees coming from the developed world. These recent instances of corruption have made the costs of corruption a hot issue

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126. Quoted in Almond & Syfert, *supra* note 16, at 447 n.242.

127. *Id.* at 431.

128. Randall, *supra* note 16, at 683.

129. Quoted in Ettorre, *supra* note 84.

130. Almond & Syfert, *supra* note 16, at 431.

131. *TI Newsletter-December 12, 1998* (visited Jan. 29, 2000) <<http://www.transparency.de/documents/newsletter/98.4/intorgan.html>>.

and have contributed in part to the changing climate in Europe toward international bribery.<sup>132</sup>

In France, an investigation of more than 100 business and political leaders for corruption led to the prosecution of sixteen French ministers and the heads of several French companies, including household names like Renault, Paribas, and Alcatel.<sup>133</sup> What is noteworthy is that the French government did not block these investigations as it had done in the past.<sup>134</sup> In Italy, the “clean hands” campaign, begun in 1992 by a handful of judges, has led to the questioning of thousands of Italian politicians and businessmen, the prosecution of more than 700 for corruption,<sup>135</sup> the suicides of officials, revelations of Mafia ties, and the trial of former Prime Minister Silvio Berlusconi for bribery.<sup>136</sup>

In 1995, the Secretary General of NATO, Willy Claes, resigned after the Belgian Parliament voted to lift his immunity from prosecution for a scandal involving helicopter contracts between the Belgian Socialist Party and Brazilian, French, and Italian manufacturers. The charge was that Mr. Claes, as a party official, had knowledge of payments totaling \$1.6 million to the Party to secure the contracts.<sup>137</sup> Because of these scandals, bribery is viewed today as a universal problem that is no longer restricted to the developing world or to particular political or economic systems.<sup>138</sup> Additionally, traditional European opposition to U.S. anticorruption efforts has become untenable given Europe’s state of affairs.

### *G. Efforts by Other Public International Organizations*

Efforts by other international organizations in the 1990s, while related in some ways to the above forces, have also added to the momentum necessary to create the current international consensus. The public international organizations that have had some success recently in combating bribery are the WTO, the World Bank, the IMF, the United Nations (UN), the European Union (EU), and the OAS. While these groups have had varying levels of success, none have been able to accomplish what the OECD has, mainly the

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132. Earle, *supra* note 7, at 226-27.

133. Almond & Syfert, *supra* note 16, at 432.

134. Chaddock, *supra* note 11.

135. *Id.*

136. Almond & Syfert, *supra* note 16, at 432.

137. *Id.* at 443; Chaddock, *supra* note 11.

138. Boswell, *supra* note 17, at 1166.

creation and ratification of individual, domestic laws making foreign bribery illegal. Many groups, however, have tied their work to the OECD Convention by referencing the Convention in their documents and asking that their members continue to implement the OECD Convention.<sup>139</sup>

The World Trade Organization has been concerned with transparency in the government procurement of goods and services. A new WTO Procurement Code entered into force in 1996 and is an improvement over the General Agreement on Tariffs and Trade (GATT) Procurement Code adopted in 1986.<sup>140</sup> The WTO Code increases the scope of coverage and procedural disciplines.<sup>141</sup> At the 1996 meeting of the WTO in Singapore, the Organization created a group to study transparency in government procurement, and according to U.S. and European officials, the hope is that this will eventually turn into a multilateral agreement.<sup>142</sup>

Just a few years ago, the World Bank and IMF stayed clear of the issue of foreign bribery, considering it too politically charged.<sup>143</sup> In 1996, however, World Bank President James Wolfensohn declared the Bank's commitment to fight the "cancer of corruption,"<sup>144</sup> and the World Bank began to put policies into place that same year.<sup>145</sup> Since then, the World Bank has suspended projects in the countries of Nigeria, Zaire, and Kenya due to corruption.<sup>146</sup> The IMF, at the same 1996 meeting, expressed similar views. IMF's director, Michel Camdessus, stated, "Countries must demonstrate that they have no tolerance for corruption in any form."<sup>147</sup> The IMF has published its own guidelines for financial assistance which state that its purpose is "to eliminate the opportunity for rent seeking, corruption, and fraudulent activity."<sup>148</sup> The IMF has, as a result of corruption scandals, taken action against the countries of Kenya and Cambodia.<sup>149</sup>

Efforts at the United Nations to address international bribery began in the 1970s, around the time the FCPA became law. Unfortunately, these efforts

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139. See, e.g., *id.* at 1171.

140. *International Organizations* (visited Jan. 29, 2000) <<http://www.ita.doc.gov/legal/main.html>>.

141. *Id.*

142. Martin, *supra* note 49, at 435.

143. Boswell, *supra* note 17, at 1173; see also Chaddock, *supra* note 112.

144. Boswell, *supra* note 17, at 1173.

145. Martin, *supra* note 49, at 436.

146. *Id.* at 437.

147. Chaddock, *supra* note 112.

148. *International Financial Institutions/Regional Development Banks* (visited Jan. 29, 2000) <<http://www.ita.doc.gov/legal/main.html>>.

149. Martin, *supra* note 49, at 437.



resulted in only a nonbinding resolution in 1976 and a draft agreement in 1979 that failed to gain support.<sup>150</sup> In 1996, however, the UN General Assembly ratified a Declaration to criminalize foreign bribery and eliminate the tax deductibility of foreign bribes.<sup>151</sup> Though this Declaration is nonbinding and therefore relatively ineffective, it demonstrates the growing acceptance by developing countries (who are not members of the OECD) of the need to address international bribery.<sup>152</sup>

The European Union addressed foreign bribery in a limited way in 1997, with its adoption of the Convention on the Fight Against Corruption.<sup>153</sup> Though this Convention addresses foreign bribery and tax deductibility,<sup>154</sup> it only applies to the bribery of officials of EU Member Countries and EU officials.<sup>155</sup> Likewise, the OAS began looking at this issue in the 1990s and adopted resolutions in 1994 and 1995 to address the problem.<sup>156</sup> In 1996, the OAS drafted and opened for signature the Inter-American Convention Against Corruption, which entered into force in 1997. This Convention is very similar to the OECD Convention and the FCPA, differing only in detail rather than in principles or scope.<sup>157</sup> A potential problem with the OAS Convention is the language by which nations promise to prohibit international bribery "subject to their Constitutions and the fundamental principles of their legal systems;" a fear is that this may provide means to avoid implementation of national laws.<sup>158</sup> The good news is that many of the countries that signed on to the OAS Convention are developing nations and are some of the more notoriously corrupt.<sup>159</sup> This may signal a turning point for these nations.

#### *H. Transparency International and Other Private Initiatives*

A final factor in the worldwide force behind the OECD Convention is the effort of private organizations, especially German-based Transparency

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150. Almond & Syfert, *supra* note 16, at 436-37.

151. Randall, *supra* note 16, at 682; *United Nations Declaration Against Corruption and Bribery in International Commercial Transactions*, Dec. 16, 1996, A/RES/51/191.

152. Randall, *supra* note 16, at 682.

153. Stuart H. Deming, *Foreign Corrupt Practices*, 32 INT'L LAW. 463, 466 (1998). The Convention is entitled: "Convention on the Fight Against Corruption Involving Officials of the European Communities of Officials of Member States of the European Union." *Id.*

154. Boswell, *supra* note 17, at 1171.

155. Deming, *supra* note 154, at 467.

156. Almond & Syfert, *supra* note 16, at 440.

157. Deming, *supra* note 154, at 466.

158. *Id.*

159. Randall, *supra* note 16, at 682.

International. TI began its work in 1993 and is the only international organization devoted entirely to the elimination of corruption.<sup>160</sup> The founders of the organization are former World Bank officials who have the backing of diverse groups including developmental agencies in Europe, foundations and corporations in the United Kingdom, and companies like General Electric, Boeing, and Enron in the United States.<sup>161</sup>

According to the organization, its purpose is to “curb corruption by mobilising a global coalition to promote and strengthen international and national [i]ntegrity [s]ystems.”<sup>162</sup> TI aims to achieve this purpose in four ways: (1) by building national, regional, and international coalitions, and embracing the State and private sector; (2) by coordinating national chapters; (3) by designing and assisting integrity systems; and (4) by collecting, analyzing, and disseminating information that raises public awareness.<sup>163</sup> Practically, this involves activities on a number of fronts. TI works with developing countries to create “islands of integrity:” countries that have undertaken TI’s anticorruption program including training investigators, improving the systems for awarding contracts, developing accounting skills, and strengthening antibribery laws.<sup>164</sup> Additionally, TI has conducted anticorruption workshops around the world, focusing on developing countries.<sup>165</sup> TI has actively promoted and monitored the OECD Convention, while chapters in the Americas have specifically promoted the OAS Convention.<sup>166</sup> Finally, the Organization has compiled a corruption index comparing the environments of fifty countries<sup>167</sup> and currently has over seventy national chapters worldwide.<sup>168</sup>

Other private initiatives have also driven the momentum. These include the International Bar Association, the Institute for Democratic Studies, the Pacific Basin Economic Council, the Transatlantic Business Dialogue, and the American Bar Association.<sup>169</sup> The International Chamber of Commerce

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160. *Mission Statement* (visited Jan. 29, 2000) <<http://www.transparency.de/mission.html>>.

161. Chaddock, *supra* note 11; see also Ettorre, *supra* note 84.

162. *Mission Statement*, *supra* note 161.

163. *Id.*

164. Ettorre, *supra* note 84.

165. *Non-Governmental Organizations* (visited Jan. 29, 2000) <<http://www.ita.doc.gov/legal/main.html>>. Transparency International recently held its 9th Annual Conference on Corruption in Durban, South Africa. It was attended by over 1,600 participants from 135 countries. *The Durban Commitment*, *supra* note 71.

166. *Non-Governmental Organizations*, *supra* note 166.

167. Salbu, *supra* note 34, at 235.

168. Boswell, *supra* note 17, at 1169.

169. *Non-Governmental Organizations*, *supra* note 166.

(ICC) first addressed bribery in 1977, but its report aroused little action.<sup>170</sup> In the 1990s, the ICC revised its 1977 report to include encouragement for the OECD Convention and recommendations for government contracts, and it has established a standing committee to work with the OECD and the WTO.<sup>171</sup>

#### IV. THE FORCE BEHIND THE FACTORS

The factors behind the OECD Convention that have been postulated by various writers and summarized above are best understood as products of the processes of globalization, and more specifically, globalization as understood through the "Globalization as Americanization" model.<sup>172</sup> Internationalization, by definition, has created international bribery—as international business has grown, so too have the opportunities for corporations to bribe foreign government officials. However, globalization, as discussed below, is the answer to the proliferation of corruption under internationalization.<sup>173</sup>

Of the eight factors discussed in Part III, all are to a greater or lesser extent various aspects of globalization. First, the growth of capitalism and economic integration is, for many, synonymous with globalization. A main reason behind the emerging view against corruption is the virtually globalized consensus, since 1989, on the validity of capitalism. According to Patrick Glynn, "The end of the Cold War and the emergence of a truly integrated international economy have also contributed to the widespread perception of corruption as a problem with inherently global ramifications."<sup>174</sup> International corruption is an important issue today, not because globalization has caused or increased international corruption (though some debate this) but because globalization has created an understanding that corruption is a global problem not to be insulated from the international community.<sup>175</sup> This new emphasis would not have been possible, or at least not as extensive, without the end of

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170. Fritz F. Heimann, *Combating International Corruption: The Role of the Business Community*, in CORRUPTION AND THE GLOBAL ECONOMY, *supra* note 70, at 150.

171. *Id.* at 151-52.

172. See *supra* notes 32-33 and accompanying text.

173. "Globalization" is different from "internationalization" in that internationalization is the increasing interaction between States seen in the last 300 years, rather than increasing global interaction between non-State actors based on denationalization. See generally Jost Delbrück, *Globalization of Law, Politics, and Markets—Implications for Domestic Law—A European Perspective*, 1 IND. J. GLOBAL LEGAL STUD. 9, 10-11 (1993).

174. Patrick Glynn et al., *The Globalization of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY, *supra* note 70, at 9.

175. See Maxwell Chibundu, *Globalizing the Rule of Law: Some Thoughts at and on the Periphery*, 7 IND. J. GLOBAL LEGAL STUD. 79, 100 (1999).

the East-West conflict and the resulting focus on economic rather than military security as advanced by the Clinton Administration. Globalization following the end of the Cold War, and the accompanying worldwide focus on economic rather than military matters, has allowed the Clinton Administration to make international corruption a higher priority than previous administrations. Democratization, as a cause of consensus, has also come about directly through globalization in the 1990s. The increasing focus on “good governance” and the “rule of law” by the IMF, World Bank, and other international organizations has had international potential since the end of the Cold War. The international adoption of the concepts of democracy and the rule of law, brought about by globalization, has been a large contributor to the recent effort to end corruption.

The development of technology and the international media are seen, along with the end of the Cold War, as a driving force of globalization. The globalization of communications has led to a convergence of ideas and values, including the increasing negative connotations associated with corruption. Also, the democratization aspect of globalization has allowed the domestic press to gain increasing freedom to tell the previously untold stories of corruption. Developing countries’ anticorruption initiatives are related to globalization in that many national policies against corruption have been pursued with vigor only in the last decade, that is, along with the emerging consensus on good governance and the rule of law. This has been a result of a burgeoning exchange of information via NGOs, international business and travel, and communication technology. Additionally, these initiatives have increased as more foreign leaders are being educated in the United States and Europe. Recent scandals in the developed world are, for the most part, also increasingly addressed due to the era’s focus on good governance. In the past, many of these scandals were quickly covered up by politicians and the judiciary (e.g., Italy); today, the global climate of transparency does not allow official cover-up. Finally, efforts by public and private organizations have been indispensable to the successful ratification of the OECD Convention and are a large part of what is known as globalization. As stated above, a key feature of globalization is its emphasis on non-State and supra-State actors and, to a lesser extent, on transnational actors like the IMF and the OECD. Non-State, supra-State, and transnational actors have all played a crucial role in the fight against corruption and the resulting OECD Convention.

What this Note shows is that while scholars argue that many different causes are behind the new international agreement against bribery, what is

ultimately occurring is a much broader effect of globalization. The process of globalization, which has created the international consensus on corruption, has also caused a convergence of values in many related areas. Since the end of the Cold War, the process of globalization has carried an entire bundle of Western, liberal ideas to all corners of the globe. Many see this spread of Western, and more specifically North American, values as a new form of imperialism. Pointing to statistics of rising world inequality,<sup>176</sup> this group argues that while globalization may be good for the United States, it is destroying the Third World. However, the processes of globalization are complex and have both positive and negative tendencies, and corruption is one area where globalization is having a truly positive effect. Various aspects of globalization, including the spread of capitalism, democracy and the rule of law, along with international media and non-governmental organizations, have created a climate where an international consensus against corruption has occurred and culminated in the ratification of a convention against foreign bribery.

#### CONCLUSION

According to Peter Eigen, Chairman of Transparency International:

When Transparency International . . . was established exactly five years ago, few of us assumed that the campaign against foreign corruption would yield significant results any time soon. . . . [But, on] Dec. 18, 1997, the 29 members of the OECD plus five other countries . . . signed the [OECD Convention]. The convention was praised by the U.S. government, hailed by the international press and dubbed a 'landmark achievement' by Transparency International. What had happened? <sup>177</sup>

What happened has been the combination of a number of forces, which together can best be explained as the process of globalization. Past unilateral efforts by the United States were ineffective. However, in today's globally interdependent world, cooperation is required; one country, even the most

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176. For example, in 1960, the world's richest 20% were 30 times better off than the poorest 20%. By 1996, the richest 20% were 61 times better off. Steve Hobden and Richard Wyn Jones, *World-System Theory*, in *GLOBALIZATION OF WORLD POLITICS*, *supra* note 30, at 126.

177. Eigen, *supra* note 52, at 22.

powerful country, cannot singularly force global change. Globalization has been able to accomplish what had previously been considered impossible.

What does the OECD Convention portend for the future of international law? The successful and speedy ratification of the OECD Convention signals a bright future for the creation and implementation of international laws. In this regard, there are three significant procedural aspects to how the OECD Convention was successfully created. First, it is a multilateral agreement created in the context of an inter-governmental organization. Since the beginning of international trade, businesspeople have been trying to reach international agreements across cultures, and more recently they have attempted to make the laws of trade internationally uniform. However, interaction over the last century has demonstrated that multilateral trade laws are very difficult for sovereign nations to form, but without coordinated trade laws, each country will act unilaterally and in its own best interest. This often means constructing barriers to trade, like quotas and tariffs, that protect a domestic market at the expense of a worldwide flow of goods and services.<sup>178</sup> The collaborative system of the OECD Convention requires many of the North's trading competitors to outlaw bribery relatively simultaneously, which has accomplished what the United States could never have done alone. The OECD has pursued what Mark Pieth calls the "joining the club" approach: securing the political determination of the key players, binding the major competitors simultaneously, then broadening the geographic scope of the agreement to include a larger circle of Southern countries.<sup>179</sup>

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178. Ernst-Ulrich Petersmann, *Constitutionalism and International Organizations*, 17J. INT'L L. BUS. 398, 410-11 (1996). The idea that individual rationality leads to collective irrationality is demonstrated by such economic game theories as the "prisoner's dilemma." (For an explanation of the prisoner's dilemma, see *id.* at 437.) This theory demonstrates that without a system of collaboration, international interaction leads to sub-optimal outcomes. Richard Little says the prisoner's dilemma "explains why states have persisted in over-fishing seas, on polluting the atmosphere, and promoting policies which inhibit trade." States "fail to pursue collaborative strategies because they expect the other members of the anarchic system to pursue competitive strategies." Richard Little, *International Regimes*, in GLOBALIZATION OF WORLD POLITICS, *supra* note 30, at 240.

However, since the end of World War II, there have been a number of contexts in which the international community has worked together to produce international laws of trade. The 1947 General Agreement on Tariffs and Trade and its 1995 replacement, the World Trade Organization, have served as a framework for the progressive implementation of uniform, liberal trade laws. According to Petersmann, these regimes offer a model for reforming international law in areas other than trade law, for example corruption. Petersmann, *supra*, at 434.

179. Mark Pieth, *International Cooperation to Combat Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY, *supra* note 70, at 129.

Second, the OECD Convention is binding on all signatories. For many years, various international organizations have attempted to address the problem of international bribery through voluntary agreements and "recommendations." While a number of countries paid lip service to the international corruption problem, no one was willing, even in the context of a mutually agreed upon international agreement, to be the first to take domestic steps against the problem.<sup>180</sup>

Today, an increasingly articulated moral and economic stance against corruption has allowed international organizations to create agreements that are binding on all signatories; as of December 1, 1999, this has meant that eighteen signatories have successfully implemented domestic legislation against international bribery.<sup>181</sup> Finally, the OECD Convention involved a broad base of support and action from non-governmental and private organizations.<sup>182</sup> The involvement of non-State organizations is a positive force in international law as it opens up the range of subjects addressed by international law as well as

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180. For example, the UN General Assembly adopted Resolution 3514 in 1975 which condemned international bribery and recommended action to fight international corruption. Unfortunately, the Resolution was not binding and had little impact. Hartman, *supra* note 18, at 166. Additionally, the OECD's 1994 Bribery Recommendation was not binding, only asking States to take "meaningful steps" to control their corporate citizens while failing to require the investigation or punishment of abuses, and therefore was not effective in controlling international corruption. See Boswell, *supra* note 17, at 1169.

181. See *supra* note 64 and accompanying text.

182. In the context of international corruption, the OECD provides for formal interaction with other IGOs and non-State actors, and is also affected by informal and unsolicited advice. As for formal activities, the 1994 Recommendation against bribery, the precursor to the 1997 OECD Convention, called on the Secretariat of the OECD to consult with NGOs and international financial institutions, like the IMF and World Bank, as well as non-Member States. Pieth, *supra* note 180, at 126. The OECD began by hosting a 1995 conference, along with the Development Assistance Committee, on Corruption and Good Governance, and in 1996 its Working Group on Bribery held a meeting with NGOs and representatives of business organizations to solicit their views on the 1994 Recommendation. *Bribery in International Business Transactions Review of the 1994 Recommendation* (visited Feb. 15, 2000) <<http://www.oecd.org/search97cgi/s9>>. Under the 1994 Recommendation, a number of international organizations, including the Council of Europe, Organization of American States, IMF, and World Bank have attended meetings of the OECD Task Force on Bribery as observers. *Id.* See also Pieth, *supra* note 180, at 126. As for informal communication, the OECD Secretariat has maintained a loose network of contacts with other international organizations. *OECD Initiatives to Fight Corruption* (visited Feb. 15, 2000) <<http://www.oecd.org/search97cgi/s9>>. Unsolicited advice comes from organizations like Transparency International (TI) and its efforts at monitoring the progress of the OECD. *The Role of the Corruption Perception Index* (visited Feb. 15, 2000) <<http://www.transparency.de/document/cpi/cpi-role.html>>. According to TI, they have had "remarkable success" at the international level in combating bribery by successfully lobbying the OECD to end tax deductibility of bribes and in support of the OECD Convention. *Facts and Figures on Corruption: 11 Questions Most Frequently Asked by Journalists* (visited Feb. 15, 2000) <[http://www.transparency.de/contact/media\\_faq.html](http://www.transparency.de/contact/media_faq.html)>.

the range of voices on any given subject.<sup>183</sup> These three procedural aspects of the OECD Convention provide an indication of *how* international law will successfully be made in the new millennium.

The substance of the OECD Convention (i.e., the growing unacceptance of corruption) also informs us of the substance of international law in the new millennium—that international law will increasingly be based on Western, liberal values. The globalization of Western values has occurred through economic integration,<sup>184</sup> and the spread of political ideas, such as democracy and human

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183. See Jost Delbrück, *The Role of the United Nations in Dealing with Global Problems*, 4 IND. J. GLOBAL LEGAL STUD. 277, 292 (1997). According to Delbrück, one of the positive aspects of this trend is the “opening up of the hitherto ‘closed shop’ of subjects of international law.” *Id.* The prime example of NGO involvement in global politics is in the context of the United Nations (UN). See *id.* at 291-92. The UN Charter was amended to provide for the formal advisory status of certain NGOs at the sessions of the Economic and Social Council of the United Nations. Willetts, *supra* note 107, at 299. While this provision confers the most formalized and extensive involvement of NGOs at the UN, further NGO and other non-State actor involvement is also provided for within many other UN groups, including the General Assembly and the Security Council. While many, including Delbrück, see NGO involvement as having a positive influence on international law, Delbrück also cautions against the unrestrained activities of transnational corporations and powerful NGOs such as Greenpeace. Delbrück, *supra*, at 295.

184. Seita, *supra* note 68, at 439-47. This has happened in a number of ways. A main vehicle has been the interaction between the members of the WTO, which boasts a membership of 135 countries. *About the WTO* (visited Feb. 15, 2000) <<http://www.wto.org/htbin/htimage/wto/map.map?81,29>>. Since the time of Adam Smith (1723-1790) and David Ricardo (1772-1823), the West has been an advocate of specialization—that each country should produce whatever it can most efficiently produce and trade freely (i.e., that trade between countries in these specialized goods should take place in the absence of inefficient barriers like tariffs and quotas). Free trade and specialization, the West believes, result in higher consumption, lower prices, and a wider range of product choices. As described earlier, uniform economic laws are required if countries are going to trade at the international level. The WTO, established in 1995, and its predecessor, GATT, established in 1947, have provided a forum for the discussion, negotiation, and adoption of international economic law in the late twentieth century. Through these negotiations and economic globalization generally, liberal, U.S. economic policies like privatization, deregulation, and trade barrier reduction have been carried throughout the world. Seita, *supra* note 68, 443-46. During the Cold War, GATT and other Western-based international organizations promoted Liberalism as a world model, and it was the collapse of communism that allowed the explosion of liberal thinking that had been fermenting. *Id.*

In addition to formal trade structures, Western capitalism has spread informally by the interaction of traders and other businesspeople through, for example, joint ventures and foreign direct investment. Many countries have adopted Western models in order to gain this private investment. Finally, and perhaps most importantly, Western economic values have spread through the structural adjustment programs of the IMF and World Bank. The activities of these organizations have been seen as some of the most imperialistic forms of economic globalization, and therefore have been the most controversial. See generally David P. Fidler, *A Kindler, Gentler System of Capitulations? International Law, Structural Adjustment Policies, and the Standard of Liberal, Globalized Civilization*, 35 TEX. INT'L L. J. (2000) (forthcoming). The World Bank and IMF, through loans and aid, have required significant changes in a requesting country's domestic economic system. This flow of financial assistance and aid is explicitly conditioned upon adaptation to Western standards. *Id.* at 22.



rights, through organizations like the United Nations and to a lesser extent, and more recently, by NGOs.<sup>185</sup> The anticorruption policy behind the OECD Convention is an excellent example of the further spread of liberal thinking in the era of globalization,<sup>186</sup> and it demonstrates what the *substance* of international law will look like in the new millennium.

What does the OECD Convention portend for the future of international bribery? The coming into force of the Convention on February 15, 1999, did not mean the speedy demise of international corruption. Rather, as Eigen states, it means "the beginning of an ongoing process of implementation and monitoring, a process that will be just as demanding on nongovernmental watchdogs as the previous phase."<sup>187</sup> This process, however, will only be successful if it continues to be supported by NGOs, such as Transparency International, and as long as it comports with the other aspects of globalization that have brought the movement this far. As Gregory Wallance notes: "From here on in . . . momentum is on our side."<sup>188</sup>

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185. The UN, whose main purpose is to help maintain international peace and security, has been the world's leading advocate of human rights and democracy. Seita, *supra* note 68, at 447. It has accomplished this through its various suborgans, including the Economic and Social Council and the Office of the High Commissioner for Refugees. Related IGOs such as the International Labor Organization and World Health Organization have supported the individual rights of workers and women, and NGOs such as Amnesty International and Human Rights Watch have campaigned against torture and for the rights of political prisoners. Willetts, *supra* note 107, at 307. As these various activities demonstrate, the expansion of Western political values has been occurring at an increased rate in the last 50 years, and these efforts were behind the surge in the number of countries adopting Western policies following the collapse of communism.

186. Glynn et al., *supra* note 175, at 9.

187. Eigen, *supra* note 52, at 23.

188. Wallance, *supra* note 61, at 1245.